IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 602/2006
(Kalu Ram and Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 17/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.C.Bishnoi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
None present for the non-petitioner No.2 though served.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 4.2.2006 passed by Additional Sessions Judge No.1, Bikaner (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 4.12.2001 passed by Judicial Magistrate, Nokha (for short 'the trial court' hereinafter) in Criminal Case No.246/2000 on an application filed by non-petitioner No.2 complainant under Section 319 Cr.P.C. arraigning the present petitioners as accused sought to be tried together with the accused facing trial, was dismissed.

I have heard learned counsel for the petitioners and the public prosecutor for the State. No one appears for the non-

petitioner No.2 complainant though served.

It is contended by learned counsel for the petitioners that injured Madanlal has suffered a single injury. He has shown me the injury report of injured Madanlal which shows that injured Madanlal suffered a Scar over forehead 2 cm above right eye brow of 3 cm long simple in nature by blunt. Learned counsel submits that the sole injury has been assigned to Kalu Ram.

I have carefully gone through the statement of injured PW-4 Madanlal who categorically stated that Kaluram inflicted injury on his forehead which corroborates the injury report. After investigation, the police filed challan against Kalu Ram S/o Kisnaram, Rameshwar, Gyan Prakash, Raju and Patasi for the single injury. The statement of other witness Gordhan appears to be contrary to the statement of injured Madanlal.

Be that as it may, for the single injury which has been assigned to Kaluram S/o Kishna Ram and with him as many as four others have been challaned and are facing trial. No specific role or overtact has been assigned to the present petitioners. In the circumstances, therefore, in my view, the trial court fell in error in arraigning the present petitioners as accused sought to be tried together with the accused facing trial and the revisional court also fell in error in affirming the order passed by the trial court.

Keeping in view the decision of Hon'ble Supreme Court in Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr., AIR 2000 SC 1127 the orders impugned cannot be sustained and are liable to be set aside.

In the result, the petition is allowed. The order impugned dated 4.12.2001 passed by the trial court and the order dated 4.2.2006 passed by the revisional court affirming the order passed by the trial court are set aside.

(H.R.PANWAR),J.

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